The decision of the United States Circuit Court of Appeals in this case is that where a technical term is used (*i. e.*, "full set of bills of lading" in the case at bar), the door is open, not merely for parol evidence to determine the meaning of the term so used, but also for *any* evidence of custom or usage relevant thereto. The rule heretofore has been that evidence of custom or usage is admissible only to determine the *meaning* of a term, the meaning of which would not otherwise be clear.

There is thus a very important principle of law which should be decided by this Court. The Circuit Court of Appeals, following the principles stated by it in *Zell* v. *American Seating Co.*, 138 F. (2d) 641 (C. C. A. 2d, 1943), has applied the parol evidence rule in the case at bar in such a way that evidence of custom or usage will always be admissible even if the effect of such evidence is to *alter* the plain meaning of the language used. The State Courts of New York and the Federal Courts heretofore have admitted such evidence only to explain the meaning of a technical term. In *Silberman* v. *Clark*, 96 N. Y. 522 (1884), for example, it was clearly decided that once the meaning of a technical term has been determined "the meaning of the language used cannot be changed or varied by proof of custom" (p. 524).

Respondent's brief does not even dispute the fact that a full set of bills of lading means all copies thereof. Thus, the meaning of the term is clear. The question thus is, may the conceded meaning of the term, "full set of bills of lading" be changed or varied by parol evidence?

Respondent does not deny that the question here involved is an important one. We submit that certiorari should be granted: (1) This Court should decide whether or not the Federal Courts may so change the parol evidence rule of New York in view of the rule established in *Erie R. R.* v.

*Tompkins* (304 U. S. 64, 1938); and (2) If so, this Court should approve or disapprove this radical change in the application of the parol evidence rule.

Respectfully submitted,

PAUL D. MILLER,
Attorney for Petitioner.

MUDGE, STERN, WILLIAMS & TUCKER,
20 Pine Street,
New York 5, N. Y.,
Of Counsel.

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